

REMARKS

Claims 1 and 11 are amended, and new claim 17 is added. Claims 1-17 are pending.

The amendments to the claims and the added new claim 17 are based on the application as originally filed. For example, claim 17 recites subject matter deleted from claim 11 as originally filed, and claim 1 is amended based on the originally filed description as well as FIG. 1d showing the scale 20, so it is respectfully submitted that no new matter has been added.

In the office action, claim 11 was rejected under 35 U.S.C. § 112, second paragraph. Claim 11 is amended and new claim 17 is added to overcome the rejection of original claim 11, so reconsideration and withdrawal of the rejection of claim 11 under 35 U.S.C. § 112, second paragraph are respectfully requested.

In the office action, claims 1-10 and 14-16 were rejected under 35 U.S.C. § 102(b) in view of European Application Number EP 0828165 A2 to Greller et al.; and claims 11-13 were rejected under 35 U.S.C. § 103(a) in view of Greller.

Independent claim 1 is amended to recite that the electro-optical hand-held distance measuring instrument of the claimed invention includes a mechanical distance measuring device (9,11) usable for a steady measurement of distances, with the mechanical distance measuring device (9, 11) being connected to the housing (2) and including an optically readable measurement scale (20).

Amended claim 1 is patentable over Greller, since Greller does not disclose or suggest every element, step, and feature of amended claim 1, including an electro-optical measuring device in the form of an electro-optical distance measurement module, as well as a mechanical distance measuring device usable for a steady measurement of each measured distance and including an optically readable measurement scale, such as the optically readable measurement scale 20 shown in FIG. 1d of the present application.

On the contrary, Greller only discloses a gauge 34 without any scale, which is used for setting or checking a pre-selected discrete distance for different sections, as described in Greller, column 4, lines 23-28.

One having ordinary skill in the art would not look to Greller for the elements, steps, and features of amended claim 1, since one having ordinary skill in the art would recognize and distinguish between checking that a pre-selected discrete distance is attained, as in Greller, instead of actually measuring a value of a distance, as performed by the distance measuring instrument of the claimed invention.

In fact, Greller teaches away from the claimed invention, since the gauge 34 of Greller lacks a measurement scale, and operates without the need for a measurement scale, since Greller only requires being able to check if a pre-selected discrete distance is attained. Greller does not contemplate measurement of actual values from a measurement scale, and lacking a scale, Greller cannot be adapted to operate in the same manner to attain the same results and functions of the claimed invention.

Accordingly, claim 1 is patentable over Greller, so reconsideration and withdrawal of the rejection are respectfully requested.

Claims 2-16 as well as new claim 17 depend from independent claim 1, and so include the recitation of amended claim 1. For the reasons set forth above, claims 2-17 are also patentable over Greller.

Therefore, claims 1-17 are patentable over Greller, so reconsideration and withdrawal of the rejection of claims 1-16, and entry and favorable consideration of new claim 17 are respectfully requested.

Accordingly, entry and approval of the present amendment and allowance of all pending claims are respectfully requested.

In case of any deficiencies in fees by the filing of the present amendment, the Commissioner is hereby authorized to charge such deficiencies in fees to Deposit Account Number 01-0035.

Respectfully submitted,



Anthony J. Natoli
Registration number 36,223
Attorney for applicants

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ABELMAN, FRAYNE & SCHWAB
666 Third Ave., 10th Floor
New York, NY 10017-5621
Tele: (212) 949-9022
Fax: (212) 949-9190